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NO. 84-468

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

City of Cleburne, Texas, et al,

Petitioners,

vs.

Cleburne Living Center, et al,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

AMICUS CURIAE BRIEF BY THE FEDERATION OF GREATER BATON ROUGE CIVIC ASSOCIATIONS, INC.

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QUESTIONS PRESENTED BY AMICUS CURIAE

1. Whether mentally retarded or mentally disabled individuals are entitled to suspect classifications or to special treatment as a group as opposed to individuals not mentally retarded under Equal Protection analysis.
2. Whether by Equal Protection analysis or by Article I, Section 10, Clause 1, analysis, legislation promoting treatment of mentally retarded can supersede local zoning ordinances and/or private deed restrictions.

LISTING OF PARTIES

PETITIONERS:

City of Cleburne, Texas
George W. Marti, Mayor of the City of Cleburne
J. T. Bass, Member of the Cleburne City Council
Arval Martin, Jr., Member of the Cleburne City Council
Lonnie Watson, Former Member of the Cleburne City Council, who resigned August 30, 1984 (Replaced Alfred Johns, deceased)
Rita Papajohn, Cleburne City Attorney (Replaced Susan McMillion, who replaced Robert T. Miller, Jr., who replaced Jim Ferguson)

ATTORNEYS FOR PETITIONERS:

Law Offices of Earl Luna, P.C.
Earl Luna
Robert T. Miller, Jr.
Mary Milford

RESPONDENTS:

Cleburne Living Center, Inc. (Now known as Community Living Concepts, Inc.)
Jan Hannah
Advocacy, Inc.

ATTORNEYS FOR RESPONDENTS:

Advocacy, Inc.
Renea Hicks
Diane Shisk

AMICUS CURIAE:

The Federation of Greater Baton Rouge Civic Associations, Inc.

ATTORNEYS FOR AMICUS CURIAE:

Maughan, Atkinson & Martin, Ltd.
Elliott W. Atkinson, Jr.

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BRIEF OF FEDERATION OF GREATER BATON ROUGE CIVIC ASSOCIATIONS, INC., AS AMICUS CURIAE

CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Constitution Article I, Section 10, Clause 1: "No state shall . . . pass any law impairing the obligations of contracts, ..."

U. S. Constitution, Amendment XIV, Sec. 1 (N): " . . . or shall any state . . . deny to any person within its jurisdiction the equal protection of the law."

CONSENT

The amicus curiae brief in support of petitioner is filed herein with the consent of both petitioner and respondent. The original written consents are filed with the Clerk of Court.

INTEREST OF THE FEDERATION OF GREATER BATON ROUGE CIVIC ASSOCIATIONS, INC.

The interest of The Federation of Greater Baton Rouge Civic Associations, Inc., is its representation of individual, single-family homeowners as opposed to special interest groups whose interests are pecuniary in nature. It is felt that the unorganized and otherwise unrepresented individual homeowners, who, in some cases, have invested life savings in a single-family dwelling located in a single-family neighborhood so restricted by local zoning ordinances and private deed restrictions, would not otherwise be

represented in this action. In support of the advancement of the mentally retarded and disabled are many well-organized national organizations which may desire to also file amicus curiae briefs resulting in a considerable imbalance and disadvantage to the individual American homeowner.

ISSUE SUBMITTED TO BE MISCONSTRUED

Whether mentally retarded and/or mentally disabled are entitled to special treatment as a group rather than individuals and thereby afforded greater rights than other citizens.

SUMMARY OF ARGUMENT

It is submitted that the establishment of mentally retarded persons by the Fifth Circuit of the United States Court of Appeals by judgment on March 5, 1984, in the above-entitled matter as a "quasi-suspect" class for equal protection analysis is misguided. If the Court were to have found that the

mentally retarded individual had been discriminated against by some history of purposefully unequal treatment, that would be a different matter.

However, the cases being litigated across the nation involve the right of several unrelated mentally retarded persons with in-house supervisory personnel to live as a group in single-family zoned or deed restricted areas, whereas a similar number of unrelated individuals not mentally retarded would be prohibited from so doing for recognized, rationally-based reasons.

Regardless of the genuine, good intentions of all concerned with the treatment and care of the mentally retarded or disabled, it must be questioned whether any type of disabled person has a constitutional right to the best treatment or care available or, in the present matter, to be placed in a group home in the least restrictive environment. Pennhurst State School vs. Halderman, 451 U.S. 1, 67 L.Ed.2d 694, 101 S.Ct. 1531 (1981). The cost burdens placed

on the states and the federal government could be beyond accurate estimate.

Placing as many mentally-retarded individuals as feasible and funds permit in the least restrictive environment appropriate for a given particular child does not mean that the rights of single-family homeowners in zoned and deed restricted areas must be set aside. Gary W. vs. State of La., 437 F.Supp. 1209, 1217 (1976). Both de-institutionalization of the mentally retarded to the extent possible and the sustaining of single-family zoned or restricted areas can co-exist by the selective placement of group homes in transitional areas allowing for multi-family zoning or in other residential areas that are not restricted by specific local zoning or deed restrictive language.

To allow states to pass laws that declare that six mentally retarded or disabled individuals with two live-in employees are a single family is to set aside the reliance on zoning ordinances or private contractual restrictions with set definitions of a

single-family, which, as commonly understood, exclude unrelated groups of any nature from their residential areas. In reliance thereon, individual homeowners have invested their life savings, with the faith that impairment of obligations of at least private contractual subdivision restrictions was protected by Article I, §10, of the U. S. Constitution. If such would be permissible, then the following year a legislature could designate 30 unrelated individuals, mentally retarded, mentally ill, or otherwise, as a single-family. The line must be drawn by affirming constitutional protection of private contractual restrictions as they now exist where such restrictions or ordinances do not discriminate against any given individual or particular group.

There is no basis to hold that the mentally retarded are to be granted a suspect or quasi-suspect classification. In the past, they were kept in predominantly large institutions not because of discrimination but because that was accepted as the best medical treatment at the time. If a more sound

medical treatment is now available through de-institutionalization, then it should be recognized simply as a "better" medical treatment. However, there is not a constitutionally protected right to such treatment that would allow the mentally retarded to live in areas where groups of any nature have otherwise been lawfully excluded.

ARGUMENT

I. MENTALLY RETARDED OR DISABLED INDIVIDUALS ARE NOT ENTITLED TO A SUSPECT CLASSIFICATION OR SPECIAL TREATMENT INDIVIDUALLY OR AS A GROUP AS OPPOSED TO INDIVIDUALS NOT MENTALLY RETARDED

The Federation of Greater Baton Rouge Civic Associations, in support of the brief and argument of the City of Cleburne, Texas, submits that a crucial point of analysis requires additional emphasis. In attempting to assign a "suspect" or "quasi-suspect" classification to the mentally retarded, there seems to be an underlying current or motivation to grant thereby greater rights than are possessed by the ordinary, normal citizen. Such reasoning is contrary to the very concept of the "Equal Protection Clause" of the United States Constitution.

In considering whether there has been any history of discrimination or purposeful unequal treatment for purposes of determining whether such would constitute a primary indicia of "suspectness," a two-part analysis should be made: (1) Whether any purposeful unequal treatment has existed toward the mentally retarded individual, and (2) whether any purposeful unequal treatment has existed or does exist toward mentally retarded when joined together in groups. Petitioner's brief adequately covers the four primary indicia of "suspectness," none of which are present in this matter which would require a special classification for constitutional protection above and beyond that possessed by any individual in this country.

Texas and Louisiana are uniquely connected to the problem of the mentally retarded and the "group home" issue through the case of Gary W. vs. State of Louisiana, et al, 437 F.Supp. 1209 (Ed. La. 1976). In Gary, the Court dealt with the well-being of numerous mentally retarded children from Louisiana that were being maintained in Texas facilities where

inadequate treatment, unnecessary long-term confinement, and neglect were alleged. The district court held that each child had a constitutional right to treatment that afforded him a reasonable chance to acquire and maintain those life skills that enable him to cope as effectively as his own capacities permitted with the demands of his own person and to raise the level of his physical, mental, and social efficiency.

The Court, in so speaking, was referring to individual rights, whether that individual was mentally retarded or not. The Court noted that involuntary institutional confinement of any person, adult or child, without question involved a substantial curtailment of liberty, citing Humphrey vs. Cady, 405 U.S. 504, 509, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972).

The Court further noted that the due process clause permits this kind of interference with the liberty of a human being only if it can be justified

by some permissible governmental interest, citing Wyatt vs. Aderholt, 503 F.2d 1305, 1312 (5th Cir. 1974); Donaldson vs. O'Connor, 493 F.2d 507, 520 (5th Cir. 1974), vacated and remanded, 422 U.S. 563, 95 S.Ct. 2486, 45 L.Ed2d 396 (1975); Gary W., supra, at p. 1216.

In its reasoning, the Court in Gary W., supra, at pp. 1217, 1218, was itself consistent in recognizing the principle in Wyatt vs. Aderholt that no constitutional right exists to the best treatment available due to logic, economics, and the scarcity of human resources which make it impossible to supply the finest care to everyone. The treatment the state must provide to the best of its ability would simply be that treatment which is based on expert advise reasonably designed to effect the purpose of state action. This Honorable Court in Pennhurst State School vs. Halderman, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981), involving treatment of the mentally retarded, held that even where a program

involving federal funds existed under 42 U.S.C., §600, et seq., limitations existed on the power to force unlimited spending on any given program by a state. The Fourteenth Amendment was not found to serve as authority to require states to assume the high cost of providing "appropriate treatment" in the "least restrictive environment" to their mentally retarded citizens. At an average cost of $68.00 per person per day, the cost of providing treatment for only 180 individuals in 30 group homes could exceed $4,467,600.00 per year. This Court concluded that Congress itself intended to encourage rather than mandate better services to the developmentally disabled. Pennhurst, supra, at 451 U.S. 19, 20, 67 L.Ed.2d 708, 709. This Court itself expressed doubt as to what, in a given case, would be meant by "appropriate treatment" in the "least restrictive" setting. Id., 451 U.S. 25, 67 L.Ed. 712.

LEAST RESTRICTIVE SETTING DOES NOT MANDATE SINGLE-FAMILY RESTRICTED NEIGHBORHOODS

The problem being encountered nationwide is

essentially this concept of providing treatment in the "least restrictive setting," a concept created by the district court in Wyatt vs. Stickney, 325 F.Supp. 781, 784 (MD Ala. 1971) and Wyatt vs. Aderholt, 344 F.Supp. 373, 344 F.Supp. 387, 396 (MD Ala. 1972), which the Court in Gary W., supra, referred to in Louisiana's situation. However, in foreshadowing this Honorable Court's holding in Pennhurst, supra, the district court in Louisiana recognized that the imperative to employ the least drastic means possible when a person must be confined does not imply a constitutional right on the part of every individual to a personal judicial determination that the means employed to improve his condition are the best possible or least restrictive conceivable. What the court directed as being required was that a state give thoughtful consideration to the needs of the individual, treating him constructively and in accordance with his own situation, rather than automatically placing him in institutions. Gary W., supra, at p. 1217.

The Court in Gary W., supra, specifically held at p. 1216:

> Though the term "least restrictive setting" is more a slogan than a constitutional imperative, it does serve as a convenient way to sum up the standard applicable to all governmental restrictions on fundamental personal liberties, as set forth in Shelton vs. Tucker, (1960) 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed.2d 231:
>
> . . . (E)ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in light of less drastic means for achieving the same basic purpose.

ISSUE OF MENTALLY RETARDED AS A GROUP IS ENTIRELY DIFFERENT FROM ISSUE OF INDIVIDUAL RIGHTS

It is emphasized by mover that all references are made to the rights of individuals and not groups. In preparing treatment plans for each child in Louisiana's situation, the Court in Gary W., supra, required that consideration be made for the least restrictive alternative for a given child but did not require the states to develop an entire new system of facilities. It is respectfully submitted that this

Honorable Court's statement in Shelton vs. Tucker, supra, equally applies to states in implementing programs and legislation for the mentally retarded.

Certainly government's purpose in encouraging improved care for the mentally retarded is legitimate and substantial; but does not the creation of legislative language making a number of unrelated mentally retarded with live-in staff, who in some cases are successive shift workers, a single family for purposes of overriding local zoning ordinances and private deed restrictions stifle fundamental personal liberties of the single-family homeowners across the nation? Across this nation, individuals have invested their life savings in a home, aptly termed "The American Dream." They did this with deed restrictions, covenants, and specifically zoned areas in mind, all of which they relied upon when they invested in a given area which restricted the use of the property to that of single-family residences. There never was any intention to restrict a mentally-retarded person from living in such an area. The

problem nationwide is the attempt to bypass local governments and their zoning ordinances or private deed restrictions by state legislatures' defining unrelated groups of mentally retarded as a single-family and thereby eliminating for appearance's sake any conflict with local zoning or covenants.

Louisiana's Mental Retardation Law, La. R.S. 28:380, et seq., would be typical of state legislative acts nationwide. At La. R.S. 28:381, a "community home" is defined:

> . . . community homes that provide for six or fewer mentally retarded or developmentally disabled individuals, with no more than two live-in staff, shall be considered single-family units having common interests, goals, and problems.

The City of Baton Rouge defines a single-family for purposes of planning and zoning in Title 7, Planning and Zoning, Section 2.101, Code of Ordinances, City of Baton Rouge, Louisiana, Parish of East Baton Rouge (1951), recodified October 12, 1983, at p. 800, which would also be typical of similar definitions nationwide:

> Family means an individual or two (2) or more persons who are related by blood, marriage, or legal adoption living together and occupying a single housekeeping unit with single culinary facilities; or not more than two (2) persons, or not more than four (4) persons (provided the owner lives on the premises) living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a non-profit, cost-sharing basis.

Organized proponents for the mentally retarded are not seeking to place mentally retarded in foster homes. If four individuals were placed with foster parents who owned the home and resided therein, there would be no conflict. However, in attempting to make the mentally retarded a suspect classification, greater rights are sought than exist for individuals not mentally retarded. They would seek a right for six unrelated, mentally-retarded persons with two live-in state employees to live in a single-family zoned area where eight unrelated persons not mentally retarded could not.

How many other groups --- mentally ill, drug abusers, prison parolees, etc. --- would also desire

special consideration as groups until the single-family zoned areas no longer exist. It is a genuine concern.

In Village of Belle Terre vs. Boraas, 416 U.S. 1, 39 L.Ed.2d 797, 94 S.Ct. 1536 (1974), this Honorable Court held a local ordinance not violative of constitutional rights where it restricted an area to single-family use, excluded lodging houses, boarding houses, fraternity houses, or multi-dwelling houses, and prohibited more than two unrelated persons from being a "family" under its definition.

The Court based its holding on the fact that the ordinance as applied:

(1) Was not aimed at transients and did not violate interstate travel rights.

(2) It involved no procedural disparity inflicted on some but not on others. In the issue before this Court, there is no procedural disparity on like number of mentally retarded but not others that would cause the granting of a suspect classification.

(3) No fundamental right guaranteed by the Constitution was involved. In the present matter, it has already been held that no fundamental right exists to the best possible treatment. Pennhurst State School vs. Halderman, supra.

(4) There existed there, as in the present matter and throughout Texas, Louisiana, and this nation, a reasonable, not arbitrary, permissible state objective to which the zoning ordinance bears a rational relationship. Zoning restrictions and private deed covenants restricting areas for single-family residential use are rationally related to a general plan of development to establish certain areas based on a given density and residential character. Groups are validly excluded with no discrimination or favoritism toward any suspect class of individuals or group.

It is submitted that even where a suspect class of individuals exist, such classification does not allow them to band together and locate as a group because of such classification where other individual

citizens as a group could not. Such would not be equality under the Fourteenth Amendment; it would be superior rights. In the thorough analysis in the brief submitted by the City of Cleburne, no basis exists for granting to the mentally retarded a "suspect" or "quasi-suspect" classification and thereby a uniquely superior right with which to shatter "The American Dream."

II. STATE LEGISLATION OVERRIDING LOCAL ZONING ORDINANCES ON BEHALF OF THE MENTALLY RETARDED CANNOT BE SUPPORTED BY THE FOURTEENTH AMENDMENT OR BY EXERCISE OF ITS POLICE POWER; OVERRIDING PRIVATE DEED RESTRICTIONS IS AN OVERBROAD EXERCISE OF POLICE POWER IN VIOLATION OF ARTICLE I, SECTION 10, OF THE UNITED STATES CONSTITUTION

A recent case in Louisiana, Tucker vs. Special Children's Foundation, 449 So.2d 45 (La.App. 1st Cir. 1984), involving a preliminary injunction, is typical of the cases across this nation that are side-stepping the issue of protection of private contractual rights. See Roberts, Can the Mentally Retarded Enjoy "Yards That Are Wide"?, 28 Wayne L. Rev. 1349 (1982) for a general comparison of cases as well as other Law Review articles cited by petitioner. The

Court of Appeal in Tucker, supra, found that Article I, Section 23, of the Louisiana Constitution provides:

> No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.

Such is Louisiana's version of Article I, §10, of the United States Constitution, and most states would have similar provisions. However, the Court in Tucker, at p. 47, also held that the obligations of contracts and vested rights must yield to and cannot inhibit the proper exercise of the police power of the state, so long as that police power is exercised for such public end and is reasonably adapted to accomplish that end.

However, where a law exceeds the bounds of reasonableness, it violates due process of law. Mugler vs. Kanoas, 123 U.S. 623, 8 S.Ct. 273, 31 L.Ed 205 (1887); City of Lafayette vs. Justus, 245 La. 867, 161 So.2d 747 (1964).

As in other instances enumerated in the many cases cited and in Texas, the intention of the state

to override local zoning ordinances or private deed restrictions for the "common good" is interpreted to be the legislature's defining a certain number of mentally retarded with live-in supervisors to be a single family.

The various states do not mandate a single-family area as a rule but allude only to the right to live in the least restrictive environment in their own community and in normal "residential" surroundings and should not be excluded therefrom because of their disabilities. La. R.S. 28:476, Tucker, supra, at 47.

It is crucial to this Honorable Court's determination of whether the mentally retarded are a suspect class as addressed in petitioner's brief that recognition be given that the mentally retarded are not excluded because of their disabilities. A group is being excluded where local zoning and private covenants are definitive in their language because they are a group; whether they are disabled or have no infirmities of any kind is not the real issue, the

exclusion is applied equally to all groups. Such practice is consistent with the language of the Act. La. R.S. 28:476.

The Mental Retardation Act in Louisiana had provided, aside from the single-family definition, for local control in La. R.S. 28:478:

> A. In order to achieve uniform statewide implementation of the policies of this Title and of those of the mental retardation law and of the mental health law, it is necessary to establish the statewide policy that community homes are permitting by right in all residential districts zones for multiple-family dwellings.
>
> B. The department shall establish appropriate standards with interpretative guidelines and establish monitoring procedures. In no case shall a community home be placed within a one thousand foot radius of another community home.
>
> C. The local sponsor shall notify the local governing authority of his intent to file an application to the department to open a community home. In any area over which a local planning commission has jurisdiction the site selection shall first be submitted to the local planning commission, which shall recommend approval or disapproval of the site to the local governing authority. The local governing authority shall then affirm or reverse the decision of the planning commission by a majority vote of its entire membership, within forty-five

> days of the date of the original notification to the local planning commission. In any area in which there is no local planning commission, the local governing authority shall approve or disapprove the site within forty-five days from the date of the original notification to the local governing authority. Whenever the local governing authority has disapproved the site, the local sponsor and the department may develop an alternate site selection for the community home which is acceptable to the local sponsor, the local governing authority, and the department.

In Louisiana, in Tucker, supra, the Court found that building restrictions stating that all lots contained in a subdivision were designated as residential lots and that no building should be erected to remain on any lots other than detached single-family dwellings was intended to apply not only to physical structure but also to the use to which the structure would be employed. However, the Court ruled such custom, intent, and long-settled practice inconsequential in that the legislature acted within its police power in stating that community homes housing six or fewer mentally retarded individuals with no more than two live-in staff shall be considered single-family units, and such exercise did not

impair the obligation of the subdivision resident's contract. Id. at 48.

It is submitted that this holding and reasoning is incorrect. It has been held that zoning itself cannot relieve property of lawful covenants without impairing contractual obligations. Richlawn vs. McMakin, 313 Ky. 265, 230 S.W.2d 902 (1950), cert. dismd., 340 U.S. 945, 71 S.Ct. 531, 95 L.Ed. 682; Murphey vs. Gray, 84 Ariz. 299, 327 P.2d 751 (1958); Griffin vs. Sharpe, 65 So.2d 751 (Fla. 1953).

In Garcia vs. Siffrin Residential Ass'n., 407 N.E.2d 1369 (1980), cert. denied, 450 U.S. 911, 101 S.Ct. 1349 (1981), the Supreme Court of Ohio dealt with the mentally retarded in context of home rule grants similar to some of Louisiana's parishes. The Court articulated the issue presented by this amicus curiae brief well at p. 1375:

> It may not be reasonably questioned that there is considerable merit in a law which seeks to maximize the assimilation of mentally retarded persons into the ordinary life of the community in which they live and to provide places for them to

> live in surroundings and circumstances as close to normal as possible. However, in carrying out these salutary state programs in aid of some of our citizens, the constitutional rights of other members of our citizenry and the constitutional authority which has been granted to our local governments must always be guarded and not infringed upon.

The Court in Garcia, at p. 1376, recognized common sense and custom in stating that such a facility and its statutorily mandated purpose and duties could not be likened to what is reasonably thought of to be a single housekeeping unit, rather it is a professional plan of rehabilitation. The nature of its operation could not constitute a "family" by the definition of the Canton, Ohio, zoning code.

The Court of Civil Appeals of Alabama dealt with the issue recently in Civitans Care, Inc., and Huntsville Group Homes, Inc., vs. Board of Adjustment of the City of Huntsville, 437 So.2d 540, (Ala.App. 1983). In Civitans, the Court dealt with a non-profit corporation seeking to place six developmentally disabled adults, with house managers living in, in a residential area zoned for duplexes. The almost

identical issue of the definition of a single family was involved. The Court essentially found the mentally retarded facility to be a boarding house and cited numerous law review articles and cases pro and con nationwide. Calling an apple an orange does not make it so. (See analyses of cases cited therein.)

Recently, this Honorable Court dismissed an appeal in the matter entitled Macon Association for Retarded Citizens vs. Macon-Bibb County Planning and Zoning Commission, 314 S.E.2d 218 (Ga. 1984), appeal dismissed, 105 S.Ct. 57 (1984).

The Court in Macon, supra, at p. 221, found the definition of single family as set forth in Macon's zoning ordinance to be rationally related to the comprehensive zoning plan and as such withstood equal protection scrutiny and no discrimination existed in excluding mentally retarded facilities. Mentally retarded seeking "group home" living were lawfully excluded not because they were retarded but because they did not fit the rationally-based definition of single family due purely to the number seeking to

reside in the single-family area. The Court further found that an alleged non-profit corporation operating the facility was not exempt from local zoning ordinances.

Local comprehensive zoning plans have long been held to be a valid exercise of a local government's planning and control of land use, especially where such is part of a reasonably comprehensive plan for the development of a given community. Village of Belle Terre vs. Boraas, supra; Village of Euclid vs. Amber Realty, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926).

In Civitans Care, Inc., supra, Civitans contended that state policy promoting the deinstitutionalization should pre-empt local ordinances. The Court found that such contention assumed that the group homes were prohibited throughout the city in question, which was not the case. The Court further noted that a state policy per se favoring the establishment of group homes does not necessarily have to

pre-empt reasonable, rationally-based zoning ordinances, which is the position presented by this brief.

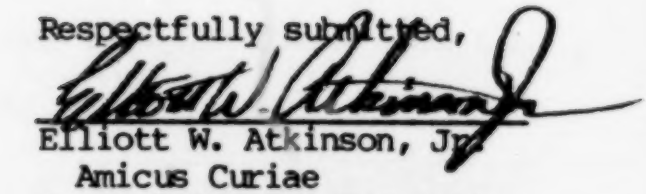
The Court's reasoning in Civitan is directly related to Garcia, supra, in its caution that state programs, salutary as they may be in aid of some of our citizens, must not be allowed to infringe upon the constitutionally protected rights of the average citizen. The equal treatment sought to be protected by the United States Constitution applies to the individual, be he retarded, disabled, homeowner, or ordinary citizen, not to a group banded together. Nothing, nothing should receive greater emphasis and protection by this high Court than the individual and the individual, American, single family. In the present matter, it is the individual single family that needs this Court's protection.

CONCLUSION

It is respectfully submitted that neither mentally-retarded individuals or the mentally

retarded as a group have been discriminated against to require the granting of a suspect classification. Medical and therapeutic treatment has been made available as medical science deemed appropriate and is changing as the knowledge changes and grows. In promoting better and more modern treatment of our mentally ill, de-institutionalization can take place within a state's budgetary capabilities by placing a small number of like developmentally retarded individuals in a small facility located in an appropriately zoned area of a given city. This can be done without taking away others' rights established by rationally-based and related zoning ordinances and specifically-worded, restrictive covenants. Each zoning ordinance and each subdivision restriction would, of course, have to stand on its own merits. This is as it should be. But that right to judge each individual case on its own merits should not be taken away by the overly broad exercise of a state's police power or the finding of a suspect classification where none is merited.

Respectfully submitted,



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December 28, 1984

CERTIFICATE OF SERVICE

I, Elliott W. Atkinson, Jr., amicus curiae counsel by consent of both parties, and a member of the Bar of the Supreme Court of the United States, admitted March 24, 1980, hereby certify that I have served three copies of the Amicus Curiae Brief in Support of Petitioner on all parties required to be served by depositing three copies of the brief to each party in the United States mail on the 28th day of December, 1984, with first-class postage prepaid, addressed to the following counsel of record for

petitioners: Mr. Earl Luna, 2416 LTV Tower, 1525 Elm Street, Dallas, Texas 75201, and to respondents' counsel, Mr. Renea Hicks and Ms. Diane Shisk, Advocacy, Inc., 7700 Chevy Chase Drive, Austin, Texas 78752.

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Sworn to and subscribed before me this 28th day of December, 1984.

Notary Public, Life Commission